

Joint Commission on Technology & Science

# Children's Online Protection Advisory Group

Presentation by the  
Office of the Attorney General of Virginia

August 4, 2021

# *Enforcement Issues from the Virginia Consumer Data Protection Act*

- Not incorporated into the Virginia Consumer Act
- Ability to Cure
- Funding for Enforcement
- Damages/Penalties/Expenses/Fees



## *Ability to Cure*

§ 59.1-579(B):

*Prior to initiating any action under this chapter, the Attorney General shall provide a controller or processor 30 days' written notice identifying the specific provisions of this chapter the Attorney General alleges have been or are being violated. If within the 30-day period, the controller or processor cures the noticed violation and provides the Attorney General an express written statement that the alleged violations have been cured and that no further violations shall occur, no action shall be initiated against the controller or processor.*

## *Ability to Cure (cont'd)*

- Substantial up-front work to identify and confirm a violation may result in single-entity compliance and little else
- No industry-wide deterrence
- Some violations of the VCDPA cannot be cured
  - Data breaches
  - Sales of data
- Others are more amenable to cure
  - Deletions of data
  - Correct inaccuracies



## ***Funding for Enforcement***

- Expected staffing requirements for VCDPA:
  - Two attorneys – develop specific subject matter expertise, evaluate claims, manage investigations, issue Civil Investigative Demands (“CIDs”), litigate CID enforcement, negotiate settlements, litigate enforcement measures, oversee compliance, litigate compliance enforcement
  - Two staff – process complaints, respond to consumers, track potential targets, conduct investigations, monitor compliance, support litigation at all stages
- Projected cost: Approx. \$415,000 per year



## ***Funding for Enforcement (cont'd)***

- Existing Fund: Regulatory, Consumer Advocacy, Litigation, and Enforcement Revolving Trust Fund (“Revolving Fund”)
  - Repository for collections (penalties, attorneys’ fees, costs, payments) recovered by the Consumer Protection Section
  - All amounts in excess of carryover (currently \$1.25 million for one-time expenses) deposited into the General Fund
  - Recent deposits: 2020 - \$5.9M, 2019 - \$22.4M, \$4.5M
  - Cost of Consumer Protection Section - \$2.7M



## ***Damages/Penalties/Expenses/Fees***

- § 59.1-580(C): “If a controller or processor continues to violate this chapter following the cure period . . . or breaches an express written statement provided to the Attorney General, . . . the Attorney General . . . may seek . . . civil penalties of up to \$7,500 for each violation under this chapter.”
- § 59.1-580(D): “The Attorney General may recover reasonable expenses incurred in investigating and preparing the case, including attorney fees, in any action initiated under this chapter.”





## ***Damages/Penalties/Expenses/Fees (cont'd)***

- Currently left unaddressed are damages suffered by consumers as a result of a violation of the VCDPA
- With only Attorney General enforcement, consumers with damages traceable to violations of the VCDPA will be left without a remedy
- A potential solution would be to allow the Attorney General to seek actual damages on behalf of injured consumers
- Consumers would be responsible for providing evidence of such damages





# Questions?

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